IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2576 OF 2006

P. Ponraj ..Petitioner.

Vs.

Municipal Corporation of Greater Mumbai & Ors. ..Respondents.

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Mr. J.B. Mishra for the Petitioner.
Mrs. A.R. Joshi for Respondents 1 to 4.

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CORAM: DR. D.Y. CHANDRACHUD, J.

18th December, 2006.

P.C. :

1. The Petition impugns an order dated 16th February, 2006 passed by the Municipal Commissioner and a communication dated 6th June, 2006 of the Project Officer (Dharavi) G-North Ward. The Municipal Commissioner by the first of those orders issued directions for the regularization of a structure which is being used as a prayer hall at Dharavi. The order notes that the structure is being used by the Indian Christian Assembly Church. By the second communication dated 6th June, 2006 the Project Officer has intimated to the Petitioner that the penalty which had been worked out in accordance with the order of the Municipal Commissioner

has been deposited by the Indian Christian Assembly Church which had also submitted an indemnity bond.

2. The Petitioner is not aggrieved by the order of regularization per se nor does he challenge the decision of the Municipal Commissioner to regularize the structure. The contention of the Petitioner is that the prayer hall should be regularized in the name of the Indian Christian Assembly Trust. The Petitioner claims to represent that Trust and has placed reliance on a communication dated 19th June, 1998 (Exh. A) of the Municipal Corporation which records that the structure consisting of Hut No.B-303 at Dharavi "is recorded in the name of Indian Christian Assembly" in the records of the Municipal Corporation.

3. The Municipal Corporation has filed an affidavit in reply of the Assistant Commissioner in the G-North Ward recording that in pursuance of the order passed by the Municipal Commissioner the penalty that was payable was worked out at Rs.1,72,344/- which is deposited by the President of the Indian Christian Assembly Church on 10th March, 2006 together with an indemnity bond. The Municipal Corporation has stated in its affidavit in reply

that in taking a decision to regularize the structure, the Corporation was not concerned with the title to the Church but with the issue of repairs and amalgamation which had been carried out in respect of a censused structure without obtaining the prior permission of the Municipal Corporation. In other words, the Municipal Corporation has clarified that the issue of title is not determined by the order of regularization.

4. The Fifth Respondent has filed an affidavit in reply to which a large number of documents have been annexed principally consisting of orders passed by the Assistant Charity Commissioner and the Charity Commissioner in proceedings under the Bombay Public Trusts Act, 1950 between the Petitioner and the Fifth Respondent. A copy of the affidavit has been served on the Petitioner on 16th December, 2006. Exh. 1 to the affidavit is an order passed on 26th December, 2002 by the Assistant Charity Commissioner accepting a change report dated 6th May, 1998 moved by the Fifth Respondent. From the order of the Assistant Charity Commissioner it appears that the Petitioner herein came to be removed as a trustee of the Indian Christian Assembly Trust. Counsel appearing for the Petitioner states that a proceeding is

pending in appeal before the Charity Commissioner. The Petitioner had adopted proceedings under Section 41-D which were dismissed by an order dated 21st July, 2003 (Exh. 3) and under Section 41-E which came to be dismissed by an order of the same date (Exh. 4). The Fifth Respondent has relied upon the pitch holders' card issued by the Municipal Corporation which reflects the name of the Indian Christian Assembly Church.

5. For the purposes of these proceedings, it is not necessary for the Court to enter upon any dispute between the Petitioner and the Fifth Respondent in respect of the title to the property. The Municipal Corporation was concerned only with the question of regularization and the Commissioner allowed the regularization subject to certain conditions. As already noted above, the Petitioner has not challenged the decision of the Commissioner to regularize the structure. The remedy of a writ petition under Article 226 is clearly not appropriate to a decision on a disputed question of title. An effort has been made on behalf of the Fifth Respondent to show that the Petitioner was removed as a trustee of the Indian Christian Assembly Trust and the Petitioner had adopted successive proceedings before the Charity

Commissioner which have also been dismissed. It is not necessary for this Court to make any observation in regard to the tenability of the claim made by the Petitioner in respect of the title to the property which forms the subject matter of regularization. The Petitioner is at liberty to espouse such remedies as are open in law to ventilate his grievance in that regard. In these circumstances, the exercise of writ jurisdiction is not warranted since the Petitioner would be at liberty to take recourse to alternative proceedings available in law. The Petition is accordingly disposed of.